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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10

11 MICHAEL ZELENY,

12 Plaintiff,

13 vs.

14 GAVIN NEWSOM, *et al.*,

15 Defendants.
16
17

Case No. CV 17-7357 JCS

Assigned to:

The Honorable Richard G. Seeborg

Discovery Matters:

The Honorable Thomas S. Hixson

**STIPULATION TO CONTINUE TRIAL
AND PRETRIAL DATES DUE TO
PENDING MOTION TO DISMISS**

Action Filed: December 28, 2017

Trial Date: June 8, 2020
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1 **I. RECITALS**

2 1. Plaintiff Michael Zeleny (“Zeleny”) took initial discovery of defendants City of
3 Menlo Park and Dave Bertini (collectively, the “City”), and Xavier Becerra in his official
4 capacity (“Becerra”), including document discovery and a deposition of Chief Bertini.

5 2. Based on this discovery, Zeleny uncovered evidence, which he believes gives rise
6 to a claim against New Enterprise Associates (“NEA”; collectively with the City and Becerra,
7 “Defendants”) for conspiracy to violate his civil rights under 42 U.S.C. § 1983. NEA denies any
8 wrongdoing or liability and disputes Zeleny’s allegations.

9 3. Zeleny amended his complaint in early April to name NEA as a defendant. The
10 parties stipulated at that time to continue trial and pre-trial dates allow NEA to enter the case as a
11 party and to resolve any pleading challenges.

12 4. NEA filed a Motion to Dismiss on May 9, 2019. [Dkt. No. 85].

13 5. On July 1, 2019, the Court granted a continuance of trial and pre-trial dates
14 because NEA’s Motion to Dismiss remained pending. [Dkt. No. 95].

15 6. On July 30, 2019, the Court issued its ruling granting NEA’s motion with leave to
16 amend. [Dkt. No. 98]. Zeleny timely filed a Second Amended Complaint, per the Court’s order,
17 on August 30, 2019. [Dkt. No. 99].

18 7. NEA again moved to dismiss the Second Amended Complaint on September 25,
19 2019. [Dkt. No. 102]. That motion remains pending and is currently set for hearing on
20 November 14, 2019, one day before the current close of discovery.

21 8. Zeleny has sought to take additional discovery, including issuing deposition
22 notices to the parties and third parties. Defendants have objected to the taking of depositions
23 while the status of NEA remains unresolved. The parties agree that it would be unduly
24 burdensome to the parties and third parties to take depositions while NEA’s status as a defendant
25 is still unsettled, and would result in potential duplication of depositions to allow NEA to
26 participate.

27 9. The current schedule is as follows:

28 Discovery Cut-Off: November 15, 2019

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|------------------------------|----------------------------|
| Expert Disclosures: | November 29, 2019 |
| Rebuttal Expert Disclosures: | December 20, 2019 |
| Expert Discovery Cut-Off: | January 10, 2010 |
| Dispositive Motion Hearings: | February 6, 2020 |
| Pre-Trial Conference: | May 20, 2020 at 10:00 a.m. |
| Start of Trial: | June 8, 2020 at 9:00 a.m. |

See Order dated July 1, 2019 [Dkt No. 95]. The parties agree that the current schedule does not leave sufficient time to take needed discovery after the resolution of NEA's Motion to Dismiss.

10. The parties have agreed to continue the dates and deadlines by approximately 120 days to allow them to complete discovery in an orderly fashion after the pleadings are settled. The parties have also taken into account the coming holiday season, which will make it more difficult to schedule depositions and other matters.

II. STIPULATION

Based on the foregoing, the parties hereby stipulate, and jointly request that the Court modify the schedule in this case, as follows:

| | |
|-------------------------------|--------------------------------|
| Discovery Cut-Off: | March 16, 2020 |
| Expert Disclosures: | March 30, 2020 |
| Rebuttal Expert Disclosures: | April 20, 2020 |
| Expert Discovery Cut-Off: | May 11, 2020 |
| Dispositive Motions Hearings: | June 4, 2020 |
| Pre-Trial Conference: | August 13, 2020 at 10:00 a.m. |
| Trial: | September 7, 2020 at 9:00 a.m. |

The parties are submitting a proposed order concurrently requesting these modifications.

[Signature Page Follows]

1 **It is SO STIPULATED.**

2 Dated: October 18, 2019

Respectfully submitted,

3 s/ Damion Robinson

4 David W. Affeld

Damion D. D. Robinson

Affeld Grivakes LLP

5 Attorneys for Plaintiff Michael Zeleny

6 s/ Noreen P. Skelly

Noreen P. Skelly

7 Office of the Attorney General

8 Attorneys for Defendant Xavier Becerra

9 s/ Todd H. Master

Todd H. Master

10 Howard Rome Martin & Ridley LLP

11 Attorneys for Defendants the City of Menlo Park
and Dave Bertini

12 s/ Roger R. Lane

Roger R. Lane

13 Foley & Lardner, LLP

14 Attorneys for Defendant New Enterprise Associates

15 # # #

16 Pursuant to Local Civil Rule 5-1(i)(3), I attest that the foregoing attorneys of record
17 authorized the filing of this document and the inclusion of their electronic signatures.

18 Dated: October 24, 2019

s/ Damion Robinson

19 Damion Robinson

PROOF OF SERVICE

I hereby certify that on October 24, 2019, I electronically filed the foregoing document using the Court's CM/ECF system. I am informed and believe that the CM/ECF system will send a notice of electronic filing to the interested parties.

s/ Damion Robinson
Damion Robinson